



THE CITY OF SAN DIEGO REPORT TO THE CITY COUNCIL

DATE ISSUED: June 14, 2006 REPORT NO. 06-074

ATTENTION: Land Use and Housing Committee
Agenda of June 21, 2006

SUBJECT: Fees for Nominations of Historical Resources and Mills Act Agreements

REFERENCE: Planning Department Budget hearing of June 13, 2005

REQUESTED ACTION:

The City of San Diego's historical resources incentive-based Mills Act program has been so successful that the workload requires a full time staff position. As the Planning Department's General Fund revenue has decreased along with staffing levels, there has been a need to reassess whether staff efforts that result in property owners receiving property tax relief in exchange for maintaining their designated historical resource should be paid for by the General Fund. This report discusses a proposal to establish a series of fees to cover the City's expenses associated with processing individually submitted historical nominations. Staff is seeking support of the Land Use and Housing (LU&H) Committee prior to proceeding to City Council with the fee.

STAFF RECOMMENDATION:

Support the City Council direction given to the Planning Department at the June 2005 budget hearing and establish cost-recovery fees for: (1) public nominations of individual properties submitted for historical designation pursuant to Land Development Code (LDC) Section 123.0202(a) (with certain limited exceptions); (2) Mills Act Agreement processing (revised fee); and, (3) Mills Act Agreement monitoring in accordance with the historical resource nomination and Mills Act Agreement fee schedule. Amend LDC by amending Section 123.0202(a) and adding Section 123.0207 (see Attachment 1), and amend Council Policy 700-46 to reflect a revised fee (see Attachment 2). Apply the new fee to pending nominations and Mills Act Agreement requests. Defer adopting fees for processing public nominations of historical districts until the Historical Resources Board (HRB) completes its review and revision of the Historical Districts policy.

SUMMARY:

BACKGROUND

Designation of a property as a historical resource is a required prerequisite for an owner seeking a Mills Act Agreement to reduce their property tax assessment. The Planning Department's

budget does not include a position for this designation or Mills Act program work. In addition, the majority of the cost associated with the designation of individually submitted historical resources is paid for by General Fund revenue. The City of San Diego generally charges a fee to a property owner for services specific to their property. The historical designation nomination process under discussion is contained in the LDC Section 123.0202(a) where any member of the public may nominate any property for consideration as a historical resource. While the adopted LDC regulations allow for an individual's property to be nominated without their knowledge or approval, most nominations are made by a property owner for their own property. For this reason, this report refers to the nomination by any member of the public under LDC Section 123.0202(a) with the commonly used term "voluntary nominations."

A nomination submitted to the City is a request for an action to be taken by the HRB to designate a property as a historical resource. After designation, a property owner may request a Mills Act Agreement with the City. The Mills Act Agreement, after being recorded with the county, usually provides substantial property tax reduction to the property owner. Tax benefits to property owners vary greatly and depend on property location, size, and comparable rents in the area based on a formula established by state law. Staff calculates that, within the City, the average property tax savings for Mills Act recipients is 50 percent, varying between 25 percent and 75 percent. This tax benefit, authorized by the state of California in Government Code Sections 50280-50290, has been available since 1995 within the City through Council Policy 700-46 "Mills Act Agreements for Preservation of Historic Property." The Mills Act Agreement is entered into for a period of 10 years, with automatic renewal each year unless one of the parties proposes to end it. The City of San Diego may propose to end the Mills Act Agreement if the property is not maintained in accordance with the U.S. Secretary of the Interior Standards, or if other Mills Act Agreement provisions are not met. This property tax reduction is offered citywide, excluding some redevelopment areas, to owners of qualified properties as a financial incentive to maintain their designated historical resources. Other financial incentives may be available within redevelopment areas.

See *Proposed New Fees/Voluntary Nomination Fee* addressing the ability for nominations to be made by someone other than the property owner. It should be noted that nominations for historical designation that are referred to the HRB through the ministerial or discretionary review process from the Development Services department are fully charged for costs associated with the HRB staff review and processing of the referred, or "non-voluntary," nomination.

DISCUSSION

Currently there is no charge to individual nominating parties for historical resource designation. Under Council Policy 700-46, the Mills Act Agreement fee was set very low in 1995 to encourage property owner participation in the program. Council Policy 700-46 established a fee of \$100 per \$100,000 of assessed property valuation for processing a Mills Act Agreement, though the City Manager's staff capped the fee at \$400. No fee is charged for the processing of the historical nomination because the City Council recognized the need to originally entice property owners to utilize the program.

Based on the very large workload, staff is now proposing to recoup the actual costs of processing voluntary nominations and Mills Act Agreements. The current \$400 fee limit for the Mills Act Agreement is lower than the estimated cost of \$526, partly because the tasks performed to complete the Agreement are different than those anticipated in 1995. Government Code Section

50281.1 allows local jurisdictions to “... require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.” Staff’s proposal is to establish a fee that recovers costs for professional and administrative staff time involved in processing and entering into the Mills Act Agreement.

The cost to process voluntary nominations is currently absorbed by the General Fund. Reductions in the availability of General Fund revenue to the Planning Department have caused a review of services that are of direct benefit to property owners, identifying a need to recoup the cost of those services.

When the Mills Act program was set up in 1995, there was no Mills Act Agreement or designated-property monitoring system established. Agreements that were entered into early in the program have now existed for ten years. As previously mentioned, Mills Act Agreements are entered into for an initial period of ten years, with automatic renewal each year. There is a responsibility, as Mills Act Agreements are automatically renewed, for the City to assure that a property remains in compliance with the original Mills Act Agreement requirements since property owners continue to receive property tax relief intended to assist with maintaining compliance. Staff believes there is a critical need to secure the necessary resources required to implement a monitoring program to assure compliance with agreement provisions and preservation of designated properties. Specifically, a monitoring program would require site visits, agreements record maintenance, and staff review of compliance.

Within the City of San Diego, the Mills Act has been an exceedingly successful incentive program for historic preservation. There are more Mills Act Agreements entered into in the City of San Diego than in any other jurisdiction in the state. See Attachments 5A and 5B for a comparative summary of the City’s program and other state jurisdictions’ programs. The City has recorded with the County Assessor 612 Mills Act Agreements from 1995 through 2005. Interest in the program remains high and continues to grow.

Proposed New Fees

State law authorizing the Mills Act program in cities allows collection of “a fee not to exceed the reasonable cost of administering this program.” Staff’s proposed fees are based on the reasonable cost of providing a service to a customer. Staff has diligently analyzed average/typical time and costs associated with the processing of voluntary nominations and Mills Act Agreements to identify an appropriate fee amount (see Attachments 3A, 3B, 3C and 3D). The proposed fee of \$2,360 consists of the following: \$1,529 per designation process; \$526 per Mills Act Agreement process; and \$305 to be assessed for monitoring with the initial agreement and every five years thereafter. The nomination fee of \$1,529 is due upon submittal of the nomination, and the Mills Act Agreement and Monitoring Program fees are due upon submittal of a signed and notarized agreement submitted by the property owner following the designation hearing. (Please note that while the costs identified in Attachment 3 include some time of a Deputy City Attorney, that the City Attorney’s office has issued an April 19, 2006 memorandum indicating that their expenses for working on these activities are cost-recoverable. Thus, fees may be adjusted slightly to reflect attorney’s costs on certain fee components.)

- **Voluntary Nomination Fee of \$1,529 (see Attachment 3A):** Currently the entire cost of processing a voluntary historical nomination request is absorbed by the General Fund. Since this process is a service to individual property owners, staff recommends

establishing a fee that recoups the average/typical cost of processing a voluntary nomination. The fee would cover direct costs of City staff to accept, review and analyze reports, conduct a site visit, and take to an HRB hearing each request for designation. The fee would also cover the costs of required document preparation that must be performed for each site upon designation by the HRB.

It should be noted that the applicable LDC section allows an application by any member of the public, not just by the property owner. Therefore, this fee would be charged to the actual person or persons submitting the nomination (e.g., neighbors submitting each others' residences as well as individuals or historical societies submitting someone's property without the owner's support - both rare exceptions to the voluntary nature of this program).

In public meetings where the proposed fee was discussed, there was concern expressed about the negative impact upon the ability for individuals or organizations to make nominations that would benefit the general public interest. Staff proposes that there be a fee exception created for certain categories of designations that can be viewed as benefiting the general public interest and supporting General Plan Historic Preservation Element and community plan goals. Staff anticipates this category could include nominations of resources with communitywide or citywide significance, but would not typically include individual residences. If this concept is supported by the LU&H Committee, staff will prepare further modifications to LDC Section 123.0202(a) for City Council adoption.

Staff also can assist a property owner who is unsure about whether their property is a likely candidate for designation and who is hesitant to spend \$1,529 for the nomination's submittal. Upon request, staff spends time, approximately one-half hour, discussing any site with an owner without charge. This is typically an adequate amount of time for the owner and their consultant to get a sense of the property's physical characteristics and changes and can alert the owner if there are obvious concerns about the property's ability to meet the U.S. Secretary of the Interior's Standards for designation.

- **Mills Act Agreement Processing Fee of \$526 (Attachment 3B):** Under Council Policy 700-46, the City Council authorizes staff to collect a fee for costs of processing the Mills Act Agreements. Staff recommends discontinuing the current fee which is based on assessed property values of record. Alternately, staff proposes a fee based on the calculated cost of the actual tasks required to process a Mills Act Agreement. Included in this fee are costs for document preparation, discussions and agreements with property owners, legal agreement signing and review, and recording of the agreement (see Attachment 2 for proposed revisions to Council Policy 700-46 supporting the fee revision).

It should be noted that staff's intent is to amend the Mills Act Agreement document shell itself and clarify current standard provisions. In addition, staff intends to include in future agreements any specific property improvements or conditions that the HRB or staff identify during the designation process that would assure that the property would be improved or maintained in a condition that warrants the agreement's property tax reductions. Other jurisdictions granting Mills Act Agreements impose conditions, and staff intends to adopt this practice. Typical requirements could include assuring visibility

of the site from the public right-of-way, reversing incompatible non-historic improvements, and maintaining key historical features of the property. Also included would be the requirement to pay a future monitoring fee as proposed below.

- **Mills Act Agreement Monitoring Fee of \$305 initially and every 5 years thereafter (Attachment 3C):** The purpose of the Mills Act legislation and Council Policy 700-46 is to encourage property owner reinvestment in historical properties through the use of property tax savings. A monitoring program is necessary to ensure agreement compliance and proper maintenance of designated properties in accordance with standards. Staff proposes this program component to assure that there is public benefit attained in exchange for the foregoing of a portion of a historical site's normally-assessed property tax. This fee would be assessed at the time of the initial Mills Act Agreement and every five years thereafter. Payment of this fee would be a condition of the Mills Act Agreement, meaning that non-payment of a future monitoring fee assessment would constitute violation of the Mills Act Agreement and subject it to revocation. Staff has not yet developed the program to identify how to assess this proposed fee to current Mills Act Agreement holders.
- Staff has also developed an additional fee of \$751 that would be charged only in the case of a **violation of the Mills Act Agreement (see Attachment 3D)**. In that case, staff would need to pursue compliance with the agreement, or process a revocation action.

Application of Fees for Submittals Pending Staff Review

Staff has had authorization to proceed with developing a fee since December 2003 (a LU&H Committee meeting directive). In addition, the City Council directed development of a fee during the budget hearings in June 2005. In neither hearing, however, was the issue of how to financially treat pending requests for voluntary nominations addressed. In order to treat all nominations equitably, staff proposes that all (approximately 60) pending requests be subject to the new fee. It is fair that requests continue to be evaluated and processed in order of submittal, with the longest-pending requests processed prior to newly-submitted ones. However, given that cost recovery is now a requirement to support this program, all requests that have not been reviewed and worked on by staff should be subject to the fee. All nominations currently awaiting staff review were submitted after July 1, 2005, i.e., after the date the City Council directed a fee be developed and returned for adoption. A City Attorney's memo, dated March 10, 2005, supports the City's ability to apply the designation fee to these waiting nominations.

Unlike development projects typically seen by City decisionmakers, designation requests submitted under LDC Section 123.0202(a) are voluntary. Because these requests are not submitted in order to receive permission to make structural modifications to one's property, an applicant or owner may withdraw an application to avoid payment of the fee. There is no penalty for withdrawing an application, and there is no mandate for the HRB to go forward with the designation process if an applicant chooses not to proceed. Property owners may make modifications to potential historical properties without the need to process a historical designation if those modifications are consistent with the U.S. Secretary of the Interior's Standards.

The City Council may establish the fee and apply it to pending nominations. Those nominations yet to be analyzed by staff as of the effective date of the fee would need to submit the

nomination fee as well as the Mills Act Agreement processing fee and monitoring fee in order to complete the Mills Act recordation (the final City step in the property tax reduction process). If processing of a nomination has been completed, and the site has been designated by the HRB, then only a revised Mills Act Agreement fee and a monitoring fee would be collected.

Additional Fee Issues

Additional issues with the fee proposal have arisen during staff's outreach and discussion with community representatives, members of the public, and historical property consultants. A meeting was held in May 2006 and many of the same issues arose as from a May 2004 meeting. Major issues are expressed through a letter from the Save Our Heritage Organisation (SOHO), (see Attachment 4). Staff took these recommendations seriously; however, after reviewing the Planning Department's fiscal situation and conferring with the City Attorney's office, staff cannot support any of these alternative fee proposals.

- **Sliding scale fee:** It has been suggested to staff that rather than establishing a single fee to be collected from every individually submitted property voluntarily applying for historical designation, that a sliding scale could be used to charge this fee based on assessed value or most recent purchase price, whichever is greater. It has been suggested that the amount charged could be \$200 per \$100,000 of assessed value or purchase price, up to a maximum charge equal to staff's actual cost to process the application. Staff has estimated that the typical cost of processing an application for historical designation is \$1,529. Therefore, under this approach, sites with an assessed value or recent sales price of approximately \$750,000 or greater would pay the calculated cost of the actual work performed by staff or more. Those with assessed value or recent sales price below \$750,000 would pay at a less-than-cost-recovery fee rate.

Staff does not support a sliding scale for several reasons: (1) while the cost of a consultant-prepared historical report may vary, based on property value because of potentially higher probability of famous inhabitants or notable architects, the staff cost associated with review of high-value properties is too similar to that of lower-value properties to establish different fee levels; and (2) basing a fee on property value replicates a tax on the property and has been successfully challenged as such for other City value-based fees.

- **Payment of all fees at the time of the Mills Act Agreement rather than when a nomination is submitted:** It has been suggested (by SOHO and others) that a fee not be charged at the time of nomination submittal but instead at the time a Mills Act Agreement is entered into. It was suggested that a submitter of a nomination could sign a statement committing to paying the nomination fee at the time of submittal of the Mills Act Agreement, i.e., after receiving historical designation status. The perceived benefits of a delayed imposition of the fee would be: those who cannot afford the City's fee (components total about \$2,400; up front is about \$1,500) will be kept from having their property designated and delaying the fee will give them confidence that they will get the future tax relief; and, individuals may be interested in designation only for preservation of the home, not for the Mills Act tax relief and they should not pay if they are only designating for public benefit.

Staff's response is that the City Attorney has advised, in a June 17, 2005, memo that "...there is no compelling governmental purpose to warrant charging Mills Act Agreement applicants for the cost of the historical designation process while providing the service at no cost to property owners that elect not to apply for a Mills Act Agreement." Staff believes there is a risk in being able to collect a fee if the HRB denies a designation; owners will not want to pay for a process where they are not able to proceed to reduce their property tax. In other fee or deposit processes in the City, an applicant must pay whether a project is approved or denied: the same requirement should apply here since the same amount of staff work is required to move a nomination to an HRB hearing. It should be noted that staff has calculated that 55 percent of the Mills Act recipients will be able to recoup \$2,000 in designation and Mills Act fees within one year, and 77 percent will recoup \$2,000 within the first two years. Savings will continue to accumulate each year.

In the same June 17 memo, the City Attorney agrees with staff that "cost recovery is best accomplished by charging the designation applicant at the time of application for designation or at established stages of the application process, but in either case, before the service is rendered." The Planning Department does not have the capacity in its budget to carry, or perhaps even forego, fees for work already performed.

Refer to the *Proposed New Fees/Voluntary Nomination Fee* section to see that staff offers a free consultation to a property owner who wants to discuss whether their property is a likely candidate for designation, and to discuss the benefits of designation.

Required Resources

One full time professional staff position is necessary to perform the tasks associated with the program discussed in this report. It is estimated that the designation processing portion of this program will require approximately 0.5 Full Time Equivalent (FTE) position per year, and the new Mills Act Agreement monitoring and maintenance component would be approximately another 0.5 FTE position. As with other positions in the historical resources program, the Planning Department will seek an individual who meets the standards for staffing a Certified Local Government program to fill this position.

It is staff's intention to closely monitor the revenue and costs of this program to ensure that staff time is fully recovered through the fee structure and that the program provides a high quality service to owners of designated historical resources for the benefit of the public. Adjustments to the fee schedule and the nomination and agreement process, in the future to better reflect accumulated experience, are a necessary component of the program to ensure accountability and credibility.

CONCLUSION

The City of San Diego greatly values the preservation of its historical resources and neighborhood character which occurs as a result of the designation of historical properties. Mills Act Agreements and voluntary nomination opportunities for property owners continue to provide a mutual benefit for both the City and historic property owners. The City Council has acknowledged the Planning Department's lack of resources to continue to support such efforts and has directed staff to develop a fee proposal. As presented herein, staff recommends adopting

a conservatively-calculated average fee for the processing of designation requests submitted in accordance with LDC Section 123.0202(a), a Mills Act Agreement, and a monitoring program. Additionally, staff recommends that the fee be applied to pending applications as previously discussed. Adoption of the complete fee proposal will provide the funding source necessary to effectively implement this function within the Historical Resources section of the Planning Department.

While voluntary nomination is a popular component of the historical resources work program, there are other equally important parts of the program that benefit the City as much as voluntary nominations do. Other private property-based staff costs typically are paid for by fees or deposits. The position added by the City Council to the historical resource program for Fiscal Year 2007 (FY07) will be utilized in work assignments critical to the City's program overall, including processing of historical districts. It is not staff's intent to utilize any significant portion of the new General Fund position for work attributable to voluntarily submitted historical nominations.

Staff is working with the HRB to review and modify the adopted Historical Districts policy. Once the revisions are made to this policy, staff will be able to better identify how the costs of a publicly-submitted historical district should be assessed.

In summary, the LU&H Committee is being asked to make recommendations to the City Council on the following actions:

1. Amendment of the LDC Chapter 12, Article 2, Division 3 to Amend LDC Section 123.0202(a) to authorize a fee for voluntary nominations, and to add Section 123.0207: Mills Act Agreements for Preservation of Historic Property.
2. Revisions to Council Policy 700-46 authorizing the granting of Mills Act tax reductions.
3. Adoption of a fee for historical nominations submitted under LDC Section 123.0202(a).
4. Adoption of a revised fee for the cost of processing Mills Act Agreements.
5. Adoption of a fee to cover staff's costs of monitoring compliance of property owners with their Mills Act Agreements.
6. Adoption of a fee that would be charged to properties that are found to be out of compliance with their Mills Act Agreement requirements.
7. Inclusion in the fee ordinance is a provision to apply the nomination fee to those nominations awaiting review and processing by City staff.

ALTERNATIVE

Do not adopt the nomination or monitoring fees discussed in this report. If fees are not adopted, this component of the historical resources program will become a General Fund function and nominations will be processed by staff as time is available. If this alternative is adopted by the City Council, staff projects capacity of processing about three voluntary nominations per month. This capacity does not allow staff to keep up with the average annual number of voluntary nominations submitted (around 50-60) and the current backlog would be expected to continue to grow. If this alternative is selected, staff recommends that it be clarified by the City Council that this pace of staff work is appropriate, given that the program would be General Fund supported. Mills Act Agreement fees would continue to be collected from interested property owners.

Staff does not recommend adopting the fees for only newly-submitted voluntary nominations but not charging those nominations waiting in the queue. As indicated, the City Attorney has indicated that a “retroactive” nomination fee is fair treatment for both waiting and future nominations.

FISCAL CONSIDERATION:

One full time professional staff position is necessary to perform the tasks associated with the program discussed in this report. It is estimated that the designation processing portion of this program will require approximately 0.5 FTE position per year, and the new Mills Act Agreement monitoring and maintenance component would be approximately another 0.5 FTE position. In order to include an additional position in the Planning Department budget to oversee the voluntary nomination/Mills Act program, the cost recovery of expenses must be assured since the Planning Department has no excess General Fund revenue to support this program. Fees have been based on expenses for an Associate Planner job classification although the Personnel Department has not yet classified a position level for this job.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In December 2003, Planning Department staff asked the LU&H Committee to support a moratorium on processing voluntary nominations while staff prepared a fee for the service. While the LU&H Committee did not approve a moratorium, it did “authorize staff to develop a fee proposal” and “to investigate internal restaffing and volunteer opportunities, and limiting the number of applications (for designation) accepted per month...” During review of the Planning Department’s Fiscal Year 2006 (FY06) budget, the City Council directed staff to prepare a fee proposal to recover costs associated with nominations of historical resources submitted by any member of the public.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

In the six months following the December 2003 LU&H direction, HRB staff met several times with the Policy Subcommittee of the HRB, and several times with historical resources consultants, community historical societies, and representatives of the City’s recognized community planning groups. The policy subcommittee of the HRB has consistently supported a fee to cover staff processing costs of voluntary nominations. However, both historical properties consultants (who themselves charge fees to property owners) and community representatives expressed concern that any fee, other than a nominal one, would deter property owners who wanted their properties to be designated as a historical resource from coming forward. The same positions came forward from consultants and community representatives at a meeting held in May 2006.

Respectfully submitted,

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- Attachments:
1. [Land Development Code, Chapter 12, Article 3, Division 2 with amendment to Section 123.0202\(a\) and new Section 123.0207](#)
 2. [Revisions to Council Policy 700-46 “Mills Act Agreements for Preservation of Historic Property”](#)
 - 3A. [Fee Components for Nomination Fee for Applications Submitted by any Member of the Public Pursuant to LDC Section 123.0202\(a\)](#)
 - 3B. [Mills Act Agreement Processing Tasks](#)
 - 3C. [Mills Act Agreement Monitoring Program Fee](#)
 - 3D. [Mills Act Monitoring Program Fee/Enforcement](#)
 4. [SOHO Letter, dated July 21, 2005](#)
 - 5A. [Mills Act Savings in the City of San Diego](#)
 - 5B. [Historic Preservation Program Information for California Municipalities Comparison](#)